

ILLINOIS POLLUTION CONTROL BOARD  
August 8, 2013

ILLINOIS POWER HOLDINGS, LLC and	)	
AMERENENERGY MEDINA VALLEY	)	
COGEN, LLC,	)	
	)	
Petitioners,	)	
	)	
AMEREN ENERGY	)	
RESOURCES, LLC,	)	
	)	
Co-Petitioner,	)	
	)	
v.	)	PCB 14-10
	)	(Variance - Air)
ILLINOIS ENVIRONMENTAL	)	
PROTECTION AGENCY,	)	
	)	
Respondent.	)	

ORDER OF THE BOARD (by J.D. O’Leary):

On July 22, 2013, Illinois Power Holdings, LLC (IPH), AmerenEnergy Medina Valley Cogen (Medina Valley), and Ameren Energy Resources, LLC (AER) (collectively, petitioners) filed a petition for variance from the sulfur dioxide (SO<sub>2</sub>) emission rate provisions of the multi-pollutant standard (MPS) applicable to the Ameren MPS Group. The Ameren MPS Group includes the following electric generating coal-fired power plants located in downstate Illinois: the Coffeen Energy Center located in Montgomery County, the Duck Creek Energy Center located in Fulton County, the E.D. Edwards Energy Center located in Peoria County, the Joppa Energy Center located in Massac County, the Hutsonville Energy Center located in Crawford County, the Meredosia Energy Center located in Morgan County, and the Newton Energy Center located in Jasper County. Pet. at 2. In this order, the Board first describes the petition and relevant prior history. Next, the Board discusses the newspaper notice of the petition and the deadline for the Illinois Environmental Protection Agency (Agency) to file its recommendation on the petition. Finally, the Board accepts the petition for variance and grants petitioners’ request to hold any hearing in this matter in Springfield.

**THE PETITION AND PRIOR HISTORY**

These are the same facilities for which the Board, in Ameren Energy Resources, LLC v. IEPA, PCB 12-126 (Sept. 20, 2012), granted AER’s petition for a variance from the 2015 and 2017 sulfur dioxide emission rate provisions of the MPS set forth in Section 225.233(e)(3)(C)(iii) and (iv), respectively. Pet. at 2. The variance from Section 225.233(e)(3)(C)(iii) applies for five years, beginning January 1, 2015 and ending December 31,

2019, and the variance from Section 225.233(e)(3)(C)(iv) applies for four years, beginning January 1, 2017, and ending December 31, 2020. *Id.* at 2-3. In PCB 12-126, the Board adopted a compliance plan that requires AER to meet mitigation SO<sub>2</sub> annual emission rates during the variance term. *Id.* at 3. While the petition in this case involves additional petitioners IPH and Medina Valley, it nonetheless “involves the same facilities, the same regulations, and the same requested relief” as the petition in PCB 12-126. *Id.* at 2.

According to the petition, IPH, an “indirect subsidiary” of Dynegy, Inc., and Ameren Corporation, AER’s parent company, have entered into an agreement that will “change ownership of the MPS Group and secure the variance relief and concomitant compliance obligations” imposed by the Board in PCB 12-126. Pet. at 4. Through the transaction, IPH will ultimately acquire the active generating facilities of the MPS Group (Coffeen, Duck Creek, E.D. Edwards, Joppa, Newton), while the facilities the Board ordered to “remain shuttered” in PCB 12-126, Meredosia and Hutsonville, will be acquired by Medina Valley. *Id.* On May 2, 2013, IPH and AER filed a joint motion to reopen PCB 12-126 to substitute parties. The Board denied the motion, but noted that IPH could file a variance petition consistent with Section 104.202(a) of the Board’s procedural rules. *Id.* at 4-5, quoting Ameren Energy Resources v. IEPA, PCB 12-126 (June 6, 2013).

Petitioners seek additional time to comply with the 2015 and 2017 SO<sub>2</sub> emission rates because “market prices for power cannot support the necessary capital expenditures to complete the Newton FGD [flue gas desulfurization] project in time to meet the MPS 2015 and 2017 emission rates.” Pet. at 29-30. The petition adds that given “depressed power prices,” compliance with the MPS 2015 and 2017 emission rates is “not achievable without the shutdown of Energy Centers, in this case the E.D. Edwards and Joppa Energy Centers.” *Id.* at 31. According to the petition, “Ameren has no reason to believe that any other potential buyer would be willing to acquire the Energy Centers without the variance, unless such buyer intended to close one or more plants.” *Id.*

### **IEPA RESPONSIBILITIES FOR PUBLICATION OF NOTICE OF PETITION AND RECOMMENDATION**

The Environmental Protection Act requires the Agency to provide public notice of a variance petition, including notice by publication in a newspaper of general circulation in the county where the facility is located within 14 days after the petition is filed. 415 ILCS 5/37(a) (2010); 35 Ill. Adm. Code 104.214. The Agency is also required to file its recommendation on the variance with the Board within 45 days after the filing of the petition, or at least 30 days prior to a scheduled hearing, whichever is earlier. 35 Ill. Adm. Code 104.216. Petitioners’ petition was filed on July 22, 2013. Therefore, newspaper notice was required by Monday, August 5, 2013. The Agency filed a certification of publication on July 30, 2013. As indicated by the Agency, newspaper notice was provided in the *Metropolis Planet* on July 24, 2013 (Massac County); the *Newton Press-Mentor* on July 25, 2013 (Jasper County); the *Canton Daily Ledger* on July 25, 2013 (Fulton County); the *Jacksonville Journal-Courier* on July 25, 2013 (Morgan County); the *Robinson Daily News* on July 25, 2013 (Crawford County); the *Peoria Journal Star* on July 25, 2013 (Peoria County); and the *Hillsboro Journal-News* on July 25, 2013 (Montgomery County).

The Agency recommendation is currently due Thursday, September 5, 2013, which is the 45th day after the filing of the petition. Within 14 days after service of the Agency's recommendation, petitioners may file a response to the Agency recommendation or an amended petition. 35 Ill. Adm. Code 104.220.

### **PETITION ACCEPTED FOR HEARING IN SPRINGFIELD**

To allow processing of this decision deadline case to proceed expeditiously, the Board accepts petitioners' petition for variance but makes no determination on the informational sufficiency or merits of the petition. *See* 35 Ill. Adm. Code 104.204, 104.208, 104.210. To ensure proper case management, the Board will assign a hearing officer to this proceeding. The Board, through orders of its own or its hearing officer, may direct petitioners to provide additional information concerning their petition.

Generally, the Board will hold a hearing on a variance petition (1) if the petitioner requests a hearing, (2) if the Agency or any other person files a written objection to the variance within 21 days after the newspaper notice publication, together with a written request for hearing, or (3) if the Board, in its discretion, concludes that a hearing would be advisable. 415 ILCS 5/37(a) (2010); 35 Ill. Adm. Code 104.224, 104.234. Petitioners do not explicitly request a hearing (Pet. at 68), and the Board has yet to receive any hearing requests in response to the Agency's newspaper notices. But, based on the filings received, and the history in the prior PCB 12-126 variance, the Board concludes that a hearing is advisable in this case.

Petitioners ask that, "[s]hould the Board decide to hold a hearing in this matter . . . any hearing take place in Springfield, Illinois, due to its proximate location to the affected facilities, as soon as practicable." Pet. at 68. Again, based on prior experience in PCB 12-126, the Board grants this request and directs the hearing officer to schedule a hearing in Springfield.

The assigned hearing officer is responsible for guiding the parties toward prompt resolution of this matter through whatever status calls and hearing officer orders she determines are necessary and appropriate. Hearings will be scheduled and completed in a timely manner, consistent with the decision deadline (*see* 415 ILCS 5/38(a)), which only petitioners may extend by waiver (*see* 35 Ill. Adm. Code 101.308). If the Board fails to take final action by the decision deadline, petitioners may deem the requested variance granted for a period not to exceed one year. *See* 415 ILCS 5/38(a) (2010). Currently, the decision deadline is November 19, 2013. *See*

35 Ill. Adm. Code 104.232. The Board meeting immediately before the decision deadline is scheduled for November 7, 2013.

IT IS SO ORDERED.

I, John Therriault, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on August 8, 2013, by a vote of 4-0.

A handwritten signature in black ink that reads "John T. Therriault". The signature is written in a cursive style with a long horizontal flourish extending to the right.

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John Therriault, Clerk  
Illinois Pollution Control Board